



MAINE DEPARTMENT OF MARINE RESOURCES

Aquaculture Administrator, 21 State House Station, Augusta, ME 04333-0021 (207) 624-6567

AQUACULTURE IN MAINE COASTAL WATERS

Federal, State, and Municipal Roles

Federal Government

- **Federal Agencies:** The following federal agencies regularly review all aquaculture lease and license applications received by the Maine Dept. of Marine Resources:
 - U.S. Army Corps of Engineers (permits for gear in US waters)
 - U.S. Coast Guard (navigation marking requirements)
 - U.S. Environmental Protection Agency (delegates discharge issues to DEP)
 - U.S. Fish & Wildlife Service (fish and wildlife issues; endangered species)
 - National Marine Fisheries Service (marine fisheries issues; endangered species)
- **National Aquaculture Program:** The National Oceanic and Atmospheric Administration (NOAA) is developing a federal aquaculture regulatory program, which presumably will govern aquaculture beyond three miles from shore, outside the state's coastal waters.

State Government

- **DMR:** The authority given by state law to the Maine Department of Marine Resources (DMR) to lease the coastal waters for aquaculture is exclusive within the state, with certain exceptions. For example, it precludes jurisdiction by the Maine Department of Environmental Protection (DEP) under the Natural Resources Policy Act, but aquaculture projects that will discharge substances into coastal waters still must obtain discharge (MPDES) permits from DEP. It also precludes jurisdiction of other state agencies and municipalities, with some important exceptions.
 - **12 MRSA §6072 (1) Authority.** *The commissioner may lease areas in, on and under the coastal waters, including the public lands beneath those waters and portions of the intertidal zone, for scientific research or for aquaculture of marine organisms. The commissioner may grant a lease to any person. Except as provided in this Part, the commissioner's power to lease lands under this section is exclusive.*

NOTE: the legal criteria for approving leases are described in a separate document.

- **Other State Agencies:** The law requires the following state agencies to be notified of all aquaculture lease applications received by DMR; these agencies review and comment as they deem necessary on the applications [12 MRSA § 6072 (6) (C)]:

- Department of Conservation (submerged and/or conserved lands)
- Department of Environmental Protection (pollution discharge permits)
- Department of Inland Fisheries and Wildlife (wildlife issues)

Municipal Government

- **Municipal Participation in Aquaculture Lease and License Review:**
Municipalities are routinely consulted and are invited to participate throughout the leasing and licensing process. Maine law and DMR rules require DMR to:
 - Conduct a pre-application meeting with the harbormaster and other municipal officials and any potential applicant for a standard (10-yr.) aquaculture lease, before the application is submitted [DMR Rule Chapter 2.07 (1)] (does not apply to experimental leases);
 - Send the municipality a copy of any completed lease application, once DMR accepts it for review [§ 6072 (5); DMR Rule Chapter 2.15];
 - Notify the municipality directly of any public hearing or scoping session [§ 6072 (5, 6); DMR Rule Chapter 2.07 (2), 2.15];
 - Grant the municipality intervenor status in any lease application case upon request [§ 6072 (5); DMR Rule Chapter 2.20];
 - Request information from the municipal harbormaster about designated or traditional storm anchorages, navigation, riparian ingress and egress, fishing or other uses of the area, ecologically significant flora and fauna, and beaches, parks, and docking facilities in proximity to any proposed lease [§ 6072 (5-A); DMR Rule Chapter 2.27];
 - Take testimony under oath at the public hearing from and allow questioning of witnesses by municipal representatives [DMR Rule Chapter 2.31];
 - Consider any conditions on the lease recommended by the municipality and provide a written explanation if any of the requested conditions is not included in the lease [DMR Rule Chapter 2.37 (1) (B)];
 - Notify the municipality when a lease has been granted [§ 6072 (10)];
 - Require, on all applications for limited-purpose aquaculture licenses (LPAs), the signature of the municipal harbormaster or, if none, another municipal official, certifying that in his or her opinion “the license activities will not present an unreasonable impediment to safe navigation, will not present an unreasonable interference with fishing or other uses of the area, and will not present an unreasonable interference with riparian ingress and egress.”. The municipal signature is not determinative, but may be considered by the Department in deciding whether to grant the license. If a municipal signature is withheld without basis, the Department can request a Marine Patrol Officer to review the application [DMR Rule Chapter 2.90 (2) (D) (2) & (4)].
 - Require, on LPA applications for sites above the extreme low water mark in a municipality with a municipal shellfish management committee, the signature of the committee chairperson to verify that the proposed LPA will not unreasonably

interfere with the activities of the municipal shellfish management program [DMR Rule Chapter 2.90 (2) (D) (3)];

- Request comment from the municipality on all applications to renew LPA licenses [DMR Rule Chapter 2.90 (2) (G) (3)]; and
 - Notify the municipality of the final status of an LPA application [DMR Rule Chapter 2.90 (2) (E) (3)].
- **Municipal Consent to Intertidal Aquaculture Leases.** DMR cannot issue a standard or an experimental (limited-purpose) lease in the intertidal zone of a municipality with a shellfish conservation program, unless the municipal officers consent. "Intertidal zone" means the shores, flats or other land between the high and mean low water mark [12 MRSA § 6071-A].
 - **12 MRSA §6072 (3) Municipal approval** (Standard leases). *In any municipality with a shellfish conservation program under 6671, the commissioner may not lease areas in the intertidal zone within the municipality without the consent of the municipal officers.*
 - **12 MRSA § 6072-A (11) Municipal approval** (Experimental or "limited-purpose" leases). *In any municipality with a shellfish conservation program under section 6671, the commissioner may not issue a limited-purpose lease under this section for the intertidal zone within the municipality without the consent of the municipal officers.*
 - **Municipal Aquaculture Permits.** Municipalities with shellfish conservation programs can adopt establish programs to lease portions of the intertidal lands in the municipality to individuals for shellfish aquaculture.
 - **12 MSRA §6673** *A municipality that has established a shellfish conservation program as provided under section 6671 may, consistent with the rights of property owners, issue a municipal shellfish aquaculture permit to a person for the exclusive use of shellfish in a designated area in the intertidal zone to the extreme low water mark within the municipality for the purpose of shellfish aquaculture. Municipal authority to issue a municipal shellfish aquaculture permit under this section does not limit in any way the authority of the commissioner to issue leases in the intertidal zone in accordance with sections 6072, 6072-A and 6072-B.*